

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Harvey & Miriam Dachs :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax under Article :  
22 of the Tax Law and New York City Personal :  
Income Tax under Chapter 46, Title T of the :  
Administrative Code of the City of New York for :  
the Year 1979. :  
:

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 4th day of April, 1985, he served the within notice of Decision by certified mail upon Harvey & Miriam Dachs, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey & Miriam Dachs  
1260 - 58th Street  
Brooklyn, NY 11219

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
4th day of April, 1985.

David Parchuck

James A. Haglund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

April 4, 1985

Harvey & Miriam Dachs  
1260 - 58th Street  
Brooklyn, NY 11219

Dear Mr. & Mrs. Dachs:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HARVEY DACHS AND MIRIAM DACHS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1979.	:	

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Petitioners, Harvey Dachs and Miriam Dachs, 1260 58th Street, Brooklyn, New York 11219, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1979 (File No. 39713).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 17, 1984 at 9:15 A.M. Petitioner Harvey Dachs appeared pro se and for his spouse, Miriam Dachs. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioners should be charged interest on the additional tax due as set forth in separate notices of deficiency dated September 10, 1982.

II. Whether the tax due in question should be reduced by the sum of \$600.00, said amount representing wage income alleged to have been lost by petitioner Harvey Dachs as the result of his attendance at various pre-hearing conferences and hearings.

FINDINGS OF FACT

1. Petitioners herein, Harvey Dachs and Miriam Dachs, timely filed separate New York State and City resident income tax returns for 1979. On page 2 of petitioners' return, total Federal itemized deductions were shown as \$9,635.35 and, after subtracting state and local income taxes of \$1,493.64, total New York itemized deductions equalled \$8,141.71. In the computation of their separate taxable incomes, both petitioner Harvey Dachs and petitioner Miriam Dachs each deducted New York itemized deductions of \$8,141.71.

2. A computer tape match between the Internal Revenue Service and the Audit Division revealed that petitioners' Federal income tax return for 1979 claimed total Federal itemized deductions of only \$6,412.00. Accordingly, on December 10, 1981, the Audit Division issued a Statement of Audit Changes to petitioners for 1979, wherein New York itemized deductions were reduced to \$4,919.00 (\$6,412.00 less state and local taxes of \$1,493.00). Additionally, only petitioner Miriam Dachs was allowed the benefit of revised New York itemized deductions of \$4,919.00 in the computation of her taxable income.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on September 10, 1982, issued separate notices of deficiency to petitioner Harvey Dachs and petitioner Miriam Dachs. The notice issued to petitioner Harvey Dachs showed tax due of \$684.07, plus interest of \$171.94, for a total allegedly due of \$856.01. Said notice gave Mr. Dachs credit for a payment of \$197.97, leaving a balance due of \$658.04. The notice issued to petitioner Miriam Dachs showed tax due of \$227.73, plus interest of \$57.25, for a total allegedly due of \$284.98. Said notice also allowed Mrs. Dachs a credit for a payment of \$65.90, leaving a balance due of \$219.08.

4. Petitioners maintain that delays by the Audit Division in auditing their return and delays in the processing of their petition through the appeals process precludes the assessment of interest in the instant matter. Petitioner Harvey Dachs asserts that he was required to attend a total of five hearings or conferences with the Audit Division regarding this matter and, as a result, lost a total of \$600.00 in wages due to his attendance at said hearings or conferences. Petitioners argue that the additional tax due, as set forth in the notices of deficiency dated September 10, 1982, should be reduced by the sum of \$600.00.

CONCLUSIONS OF LAW

A. That there is no provision in Article 22 of the Tax Law or Chapter 46, Title T of the Administrative Code of the City of New York which would permit interest to be waived. Petitioners at all times had the option of paying the proposed deficiencies so as to stop the accrual of additional interest charges.

B. That there is no provision in Article 22 of the Tax Law or Chapter 46, Title T of the Administrative Code of the City of New York which would allow petitioners a credit or reduction in tax equal in amount to wages lost as the result of petitioner Harvey Dachs' attendance at hearings and conferences.

C. That the petition of Harvey Dachs and Miriam Dachs is denied; and that the notices of deficiency dated September 10, 1982 are sustained, together with such additional interest as may be lawfully due and owing.


DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER